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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re Grady L., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. GRADY L., Defendant and Appellant.	A126439 (Alameda County Super. Ct. No. SJ08010796)

Grady L. appeals from orders of the juvenile court adjudging him a ward of the court and placing him on probation in his mother's home. He contends the court improperly imposed a search condition in the erroneous belief it had no discretion to do otherwise. We affirm.

STATEMENT OF THE CASE AND FACTS

On May 18, 2009, a subsequent petition under Welfare and Institutions Code section 602 was filed, alleging that 17-year-old Grady L. committed felony assault (Pen. Code, § 245, subd. (a)(1)) and personally inflicted great bodily injury upon the victim (Pen. Code, § 12022.7). According to the probation report, appellant and two other juveniles were detained after a fight in a McDonald's parking lot. The victim told the police a verbal argument had begun inside the restaurant, then outside appellant approached the victim and began to punch him in the face and strike him in the head. The other juveniles joined in, and a witness said the minors appeared to be "stomping on

the victim's head." Appellant told the probation officer he had accidentally walked into an occupied stall in the bathroom, apologized to the occupant, and walked out. In the restaurant, the man tapped appellant on the back and appellant walked outside to the car; the victim "kept flipping him off" and " 'threw the first punch.' " Appellant told the probation officer he was "only defending himself against a grown man."

At the time of this incident, appellant was on probation, residing in his mother's home, after having admitted the allegation of misdemeanor vehicle theft (Veh. Code, § 10851) in a September 24, 2008 amended petition.[1] According to the dispositional report, appellant and a companion were found at about 4:00 a.m. standing near a car that was stopped in the road and turned out to have been reported stolen five days previously. Appellant's companion told the probation officer they had found the car in front of an apartment building with the engine running and drove it for half an hour until it ran out of gas.

On August 18, 2009, appellant admitted the assault allegation in the subsequent petition and the great bodily injury allegation was dismissed on the district attorney's motion. On September 15, the court set the level of the offense as a felony, stating that it might be reduced to a misdemeanor upon successful completion of probation. Appellant was placed on probation, in his mother's home. Among the conditions of probation, the court ordered appellant to comply with a "4-way" search.

Appellant filed a timely notice of appeal on October 15, 2009.

DISCUSSION

Appellant contends the trial court abused its discretion and violated his constitutional rights by imposing a "four-way search" probation condition in the mistaken belief it was mandatory. The condition required appellant to "[c]onsent to the search of his . . . person, vehicle, or place of residence at any time, day or night, with or without a search warrant and with or without probable or reasonable cause, on the direction of the probation officer or a peace officer."

[1] An allegation of felony receiving stolen property had been dismissed on the district attorney's motion.

At the disposition hearing, defense counsel told the court that appellant had a search condition as a result of his prior petition and that the Alameda police had searched his home on "numerous occasions," including searching and photographing the living room, which served as appellant's mother's bedroom, with neither appellant nor a probation officer present.[2] Counsel stated that appellant's mother had filed a complaint with the police department and was concerned about the search clause, and asked whether the court could specify that the search was for appellant's room only and that the probation officer must be present when a search is executed.

The court asked appellant's mother whether she wanted appellant to stay at home despite the search clause, explaining, "because to be honest, I have little control on how law enforcement chooses to implement a search clause. And a search clause is mandatory on probation. There's no way—and I can't—and I wouldn't set aside the search clause. So it's important for me to know and that you have an understanding that there will be a search clause and that I can't control how law enforcement handles that."

Appellant's mother stated she did want him to live at home. Defense counsel asked the court to consider making the search "three-way" because there was "no nexus" between either of appellant's offenses and his home, and the police had searched the home multiple times but never found anything. The court declined, seeing the issue as a matter of how the search condition was being enforced, which should be dealt with through police department processes.

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[2] Counsel explained: "[Appellant] has a search clause as a result of that [Vehicle Code] 10851 [violation], and the police have been to his home on numerous occasions and searched his house because of that. It's a one-bedroom apartment. [Appellant's] mother sleeps in the living room. When you open the front door of the house, you are coming to what is essentially her bedroom. The police came in, took photographs of the entire house. The took photographs of her bedroom. They went and they searched [appellant's] room, and this is all while he was not there. There was no probation officer with them, even though it is a search clause. It is for the utilization of the probation officer, and this has happened on numerous occasions." Appellant's mother indicated that 10 or 15 officers conducted the search and asked why "the whole squad of the Alameda Police Department" had to come to her house.

Welfare and Institutions Code section 730, subdivision (b), authorizes the juvenile court, when placing a ward on probation, to "impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." Under *People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*), "[a] condition of probation will not be held invalid unless it '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .' " This test applies in juvenile cases. (*In re T.C.* (2009) 173 Cal.App.4th 837, 847.) "In fashioning the conditions of probation, the juvenile court should consider the minor's entire social history in addition to the circumstances of the crime. (*In re Todd L.* (1980) 113 Cal.App.3d 14, 20.)" (*In re Walter P.* (2009) 170 Cal.App.4th 95, 100.)

Appellant argues that the trial court improperly failed to consider the *Lent* test or his social history because it erroneously believed the search condition was mandatory. He maintains that the search condition is invalid because it is not reasonably related to his offense of assault; it relates to conduct that is not in and of itself criminal in that appellant has a right to refuse to submit to warrantless and unreasonable searches (*In re Martinez* (1978) 86 Cal.App.3d 577, 583); and the assault offense provides no rational basis for "projecting" future criminality that would be prevented by a search condition. He further argues the condition is unconstitutional because it was not tailored to his particular situation (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084 [invalidating banishment condition]).

Prior to the present petition, appellant was subject to a four-way search requirement as a condition of his probation on the previous vehicle theft petition. Citing *People v. Senior* (1995) 33 Cal.App.4th 531, 538 (*Senior*), and *In re Natasha A.* (1996) 42 Cal.App.4th 28, 34, respondent argues that because the condition was imposed in the present case as part of an aggregated disposition on the two petitions, and appellant did not appeal from the disposition when the condition was first imposed, he cannot challenge the continuation of the search condition now. *Senior* held that a defendant

waived a sentencing issue that could have been raised in two prior appeals but instead was raised for the first time on a third appeal with no showing of good cause for the delay. (*Senior*, at pp. 533, 538.) *In re Natasha A.*, citing *Senior*, held that a father appealing from denial of his request for visitation at an 18-month review hearing could not belatedly challenge the validity of the original dispositional order denying visitation, which had been affirmed on appeal. The father's proper remedy was a petition for modification. (*In re Natasha A.*, at p. 34.)

Appellant attempts to distinguish *Senior* by characterizing it as only stating the rule that claims that should have been brought on appeal cannot be raised in a petition for writ of habeas corpus instead. This is an incorrect characterization: *Senior* discussed the writ rule only by way of analogy, stating that the considerations underlying it warranted application of the waiver rule in the multiple appeal situation. (*Senior, supra*, 33 Cal.App.4th at pp. 537-538.) *Senior* and *In re Natasha A.* stand for the general principle that an issue that could have been, but was not, raised by appeal cannot be challenged in a subsequent appeal. The question is whether this general rule applies in the present context, where a probation condition imposed in proceedings on a juvenile wardship petition is challenged only after it is continued at disposition on a subsequent petition as part of probation granted on the aggregated offenses.

We decline to decide this question because, assuming the challenge is properly before us, we are not persuaded that the trial court abused its discretion.[3] At the disposition hearing, defense counsel initially asked the court if it could specify that the search condition was for appellant's room only, not the whole house, and could require that a probation officer be present when a search was executed. Counsel explained that

[3] Respondent also maintains appellant forfeited his challenge to the search condition by failing to object on *Lent* grounds. While respondent is correct that appellant did not specifically cite *Lent*, and that the main focus of appellant's complaint was on the manner in which the search condition was enforced, appellant did argue that there was "no nexus" between the offenses and appellant's home, clearly indicating the first prong of the *Lent* test requiring a "relationship" between the probation condition and the crime committed. (*Lent, supra*, 15 Cal.3d at p. 486.)

appellant's mother was concerned because she and appellant lived in a one-bedroom apartment, with the mother sleeping in the living room, and on numerous occasions the police had searched the home and taken photographs of her bedroom (the living room), with neither appellant nor a probation officer present. This request was prefaced by counsel explaining, in the context of arguing for the court to set the assault as a misdemeanor, that appellant had been doing very well on probation and that when counsel called the probation officer about the disposition report recommending out of home placement, "what she told me, one of the big issues I've been dealing with with [appellant] and his mother is the fact that they live in Alameda. And because of the prior case, [appellant] got on the Alameda police radar. And in Alameda, once the police are aware of you and think that you are a criminal, it's my opinion that they do their best to run you out of town." Counsel explained that appellant's mother had told the probation department she was unwilling to comply with the probation search condition because she was frustrated with the police conduct at her home, but that she had since filed a complaint with the police and in fact wanted appellant at home. Throughout this discussion, defense counsel made no suggestion that the search condition was inappropriate as to appellant, only that because of the family's living circumstances and the manner of the police enforcement, it was a burden on appellant's mother. The court made clear that the probation condition would continue if appellant remained on probation, and discussed with appellant's mother whether she wanted appellant at home despite this.

After the court stated its findings and orders, defense counsel asked if the court would consider making the search condition "three-way,"[4] rather than "four-way," urging that "in both of these offenses, there seems to be no nexus between the activity and the home" and "[b]ecause of the living situation they have, there's no nexus whatsoever." Counsel noted that nothing indicating illegality had ever been found at the home, despite

[4] That is, eliminate authorization of a warrantless search of appellant's home.

multiple searches. The court reiterated that the problem appeared to be with enforcement of the search condition, which was an issue for the police rather than for the court.

It seems clear, on this record, that the court's assessment was correct: The problem counsel was attempting to address by asking for a change in the search condition was with the manner in which the condition was being enforced by the Alameda Police Department, not with the fact of the condition per se. The premise of appellant's argument on appeal is that the court believed a four-way search condition was mandatory and therefore abused its discretion in imposing the condition. The court did state, in response to the initial request to limit the search condition to appellant's room and require that a probation officer be present during a search, and in the course of asking appellant's mother whether she wanted appellant at home despite the search condition, that "a search clause is mandatory on probation." It also stated, however, "and I wouldn't set aside the search clause." In context, the court's remarks appear to be more an explanation of the situation to appellant's mother than a statement that the court had no discretion in the matter. Indeed, the court indicated it was exercising its discretion when it said it would not set aside the clause. (See *People v. Fuhrman* (1997) 16 Cal.4th 930, 944 [where record does not indicate whether trial court was aware it had discretion to strike prior conviction under Penal Code section 1385, no remand required if trial court indicated it would decline to strike the conviction even if it had authority to do so].) When appellant's attorney raised the question again, the court responded, "I don't think changing it to a three-way search clause is the appropriate way to handle it. It seems to me this is not really an issue for me; it's an issue that involves [appellant], his mother, and the Alameda Police Department." Contrary to appellant's argument, the record indicates the court made a choice not to alter the search condition because it believed the modification appellant sought was not appropriate.

Appellant urges that if the trial court had applied the *Lent* test, it would have concluded the search condition was improper because it was not reasonably related to appellant's assault offense or future criminality. In *In re Martinez, supra,* 86 Cal.App.3d 577, 579, one of the cases appellant cites, the defendant was convicted of misdemeanor

battery on a police officer after throwing a bottle which shattered against a police vehicle while two officers tried to impound an illegally parked vehicle amid a crowd of some 50 young people yelling obscenities and throwing beer cans and bottles. *In re Martinez* invalidated a warrantless search condition because, on the "unique" facts of that case, including that the defendant did not use a concealed weapon, was convicted of a misdemeanor offense, and had nothing in his history to suggest the offense was anything other than an isolated incident, the search condition was not reasonably related to the offense or future criminality. (*Id*. at pp. 582-583.) Appellant argues the search condition in the present case was unjustified because his offense, assault, has no rational relationship to theft, possession of stolen property, drugs or alcohol, and did not support an inference of future criminality that could be prevented by a search requirement.

In re Abdirahman S. (1997) 58 Cal.App.4th 963 distinguished *In re Martinez* in upholding a search condition for a juvenile found to have committed misdemeanor assault based on his having handed a chunk of asphalt to a classmate who used it to injure a third classmate whom the second had previously threatened. The juvenile relied upon *In re Martinez* and another case, which similarly found a search condition improper where the defendant did not have a propensity to use a concealed weapon in the future. Responding to this argument, *In re Abdirahman S.* stated: "However, '[a] condition of probation which is impermissible for an adult criminal defendant is not necessarily unreasonable for a juvenile receiving guidance and supervision from the juvenile court.' (*In re Todd L.*[, *supra*,] 113 Cal.App.3d 14, 19.) 'Broadly the purpose of the juvenile court law is to provide for the protection and safety of the public as well as of the minor. [Citation.]' (*In re Binh L*. (1992) 5 Cal.App.4th 194, 204; [Welf. & Inst. Code,]§ 202, subds. (a), (b) & (d).)" (*In re Abdirahman S.*, at p. 969; *In re Byron B.* (2004) 119 Cal.App.4th 1013, 1016.) "[J]uvenile conditions may be broader than those pertaining to adult offenders. This is because juveniles are deemed to be more in need of guidance and supervision than adults, and because a minor's constitutional rights are more circumscribed. The state, when it asserts jurisdiction over a minor, stands in the shoes of the parents. And a parent may 'curtail a child's exercise of the constitutional

rights . . . [because a] parent's own constitutionally protected "liberty" includes the right to "bring up children" [citation,] and to "direct the upbringing and education of children." [Citation.]' ([*In re Frank V.* (1991) 233 Cal.App.3d 1232,] 1243; *In re Roger S.* (1977) 19 Cal.3d 921, 928.)" (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.)

In setting the terms of appellant's probation, the trial court was required to consider not only the current offense, but the offense underlying the prior petition and appellant's entire social history. Appellant's prior offense, automobile theft, has been viewed as a reasonable predicate for a probation search condition. (*In re Binh L., supra,* 5 Cal.App.4th at p. 204.) Appellant distinguishes *In re Binh L.* as involving automobile theft, which "connotes possession of tools to enter and operate locked automobiles, possession of small articles taken from such automobiles, and other forms of larcenous behavior" (*ibid.*), whereas there is no evidence appellant did anything other than ride in an abandoned car. Nevertheless, the offense was theft related and it was not unreasonable for the juvenile court to view the search condition as related to appellant's future criminality.

Additionally, while appellant denied current drug or alcohol use, and had tested negative for drug use while on probation, he admitted having used marijuana in the past. Appellant's mother believed he drank alcohol. In October 2009, appellant was suspended from school for refusing to cooperate with an investigation of drug sales on campus: Appellant was among a group of students involved in "what appeared to be suspicious activity in the boys' bathroom" and refused to be searched, apparently because of his appeal challenging the conditions of his probation. These indications of possible drug and alcohol use support the reasonableness of the search condition to ensure appellant's compliance with the terms of probation. (See *In re Todd L., supra,* 113 Cal.App.3d at p. 20.)

For all the reasons discussed above, we also reject appellant's contention that the four-way search condition was unconstitutionally imposed in his case. As appellant recognizes, " 'conditions which infringe on constitutional rights may not be invalid if tailored specifically to meet the needs of the juvenile [citation].' " (*In re Binh L., supra,*

5 Cal.App.4th at p. 203, quoting *In re Michael D.* (1989) 214 Cal.App.3d 1610, 1616.) Here, the only grounds suggested for determining that the search condition was not sufficiently tailored to appellant's situation are that the condition was burdensome for his mother because of their specific living situation and that the Alameda Police Department was overzealous in executing searches of the home. As the trial court explained, these concerns were not relevant to the question whether the condition was properly imposed upon appellant. Indeed, even when appellant's attorney expressly argued that there was no nexus between appellant's offense and a warrantless search of the home, the point was phrased in terms of appellant's living arrangement with his mother: "Because of the living situation they have, there's no nexus whatsoever." In light of appellant's former offense and overall history, the search condition was not unconstitutionally imposed.

The judgment is affirmed.

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Kline, P.J.

We concur:

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Haerle, J.

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Richman, J.